

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection)	MD Docket No. 00-58
of Regulatory Fees for)	
Fiscal Year 2000)	

REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby replies to the comments of other parties in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding relating to regulatory fees for Fiscal Year 2000, FCC 00-117 (rel. Apr. 3, 2000) (the "*Notice*").

The Commission should reject the arguments put forth by Comsat in its attempt to continue to escape fee liability for the costs associated with Commission regulation of Comsat's activities. The Commission's proposal to collect full space station fees from Comsat is consistent with the law and required to achieve regulatory and competitive parity. The Commission should also modify its cost accounting system to separately track costs associated with new services. This will permit the Commission to adjust the space station fee in accordance with the statutory mandate that fees be reasonably related to regulatory benefits for fee payers.

I. COMSAT IS NOT ENTITLED TO EXEMPTION FROM OR A REDUCTION IN THE SPACE STATION REGULATORY FEE

In the *Notice*, the Commission proposed for the first time to require Comsat to pay the applicable regulatory fee for GSO space stations for each of the spacecraft in the INTELSAT system. *Notice* at ¶ 17. In its comments, GE Americom strongly supported the Commission's proposal, noting that the Commission's past decisions exempting Comsat from space station regulatory fees conflicted with the purpose of the statute. In fact, the Commission's 1998 decision to exempt Comsat was overturned by the D.C. Circuit Court of Appeals in *PanAmSat Corp. v. FCC*, 198 F.3d 890 (D.C. Cir. 1999) ("*PanAmSat*"). Furthermore, the Commission's action shifted costs created by Comsat to rival service providers, skewing the competitive playing field in Comsat's favor. See GE Americom Comments at 1-3.

PanAmSat also filed comments in support of the *Notice*. PanAmSat noted that charging Comsat space station regulatory fees is necessary to achieve regulatory parity under the terms of the ORBIT Act.¹ PanAmSat also demonstrated that there is no basis for charging Comsat a lower per satellite fee than that assessed on other operators. PanAmSat Comments at 1-2.

Predictably, Comsat strenuously objects to the Commission's proposal and seeks to continue to shift costs associated with regulation of Comsat to competing carriers. Comsat devotes a substantial portion of its pleading to the

¹ See PanAmSat Comments at 1, *citing* Section 641(c) of the Open-Market Reorganization for the Betterment of International Telecommunications Act, P.L. No. 106-180, 114 Stat. 48 (2000).

claim that under the regulatory fees statute Comsat is not liable for fees related to INTELSAT spacecraft. In fact, however, the *PanAmSat* court clearly held that the statute permitted the assessment of space station fees against Comsat, considering and rejecting the arguments Comsat makes here. Moreover, the ORBIT Act provides the Commission with independent authority to collect regulatory fees from Comsat as proposed in the *Notice*. Accordingly, the Commission should adopt its proposal and charge Comsat the full space station fee for each INTELSAT spacecraft.

A. The *PanAmSat* Court Held that Neither the Statute Nor its Legislative History Precludes Imposition of Space Station Regulatory Fees on Comsat

Comsat argues at length that the Commission's proposal to charge Comsat space station regulatory fees conflicts with the statutory language and legislative history. Comsat Comments at 6-16. In making these contentions, Comsat largely ignores the contrary holding of the D.C. Circuit in the *PanAmSat* case. In that decision, the court held that the Commission reached its decision to exempt Comsat from space station regulatory fees "via a plain misreading of the statute." *PanAmSat*, 198 F.3d at 896. The court determined that

the statute plainly does not require – and may not permit – Comsat's exemption from space station regulatory fees. Nor would the legislative history change the result, assuming the statute to be ambiguous enough to allow its consideration.

Id. at 895. The court also held that payment by Comsat of space station regulatory fees would serve the purpose of the regulatory fees statute. *Id.* In light of these

clear statements, Comsat's claim that the Commission's proposal to impose space station regulatory fees on Comsat is contrary to the language, legislative history, and intent of the statute must be rejected.

In an obvious attempt to downplay the *PanAmSat* decision, Comsat characterizes it as simply preventing Comsat from asserting immunity from fees pursuant to the INTELSAT Agreement. See Comsat Comments at 2, 20. The holding of the *PanAmSat* court, however, is much broader than that and disposes of the arguments Comsat raises in its comments.

In particular, the court expressly disagreed with the claim – made by the Commission in the appeal and by Comsat here – that Section 9 of the Communications Act does not allow imposition of space station fees on Comsat. See, e.g., *PanAmSat*, 198 F.3d at 895 (“The plain terms of § 9 . . . clearly do not *require* an exemption for Comsat, and there is no obvious hook in the language on which to hang an exemption.”) (emphasis in original). Comsat argues that INTELSAT spacecraft cannot be subject to regulatory fees because the Commission does not license the satellites. The *PanAmSat* court rejected this argument as well, concluding that “imposing § 9 fees on Comsat is consistent with the FCC’s Title III licensing jurisdiction” and follows the same rationale that led the Commission to subject Comsat to space station application fees. *Id.* at 896. As noted above, the court also explicitly addressed and denied the claim made by Comsat here that the statute’s legislative history required Comsat to be exempt from fees. *Id.*

Similarly, Comsat's claim that it generates no Commission costs that are properly recoverable by regulatory fees (Comsat Comments at 9-10) is untenable and directly conflicts with the court's decision. As the court noted, the Commission has specifically determined that it incurs regulatory costs as a consequence of Comsat's participation in the INTELSAT program. *PanAmSat*, 198 F.3d at 895, *citing Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13550 (1995). The court also recognized that because the Commission exempted Comsat from liability, the costs generated due to regulation of Comsat are shifted to other regulated entities that provide competing services. *PanAmSat* at 894 n.2.

B. The ORBIT Act Independently Authorizes the Imposition of Space Station Regulatory Fees on Comsat

In addition to the clear *PanAmSat* precedent, the ORBIT Act separately authorizes the Commission to collect space station regulatory fees from Comsat. Section 641(c) of the ORBIT Act is titled "Parity of Treatment" and provides that the Commission "shall have the authority" to impose regulatory fees on Comsat similar to those it imposes on entities providing similar services.

The Commission has already concluded that oversight of Comsat's participation in the INTELSAT satellite system imposes costs that are properly recoverable through regulatory fees. Regulatory parity requires that Comsat bear these costs instead of getting a free ride while the costs are shifted to Comsat's competitors.

Comsat argues that under ORBIT, the Commission can charge Comsat regulatory fees only if it charges direct access users of INTELSAT capacity on the same basis. Comsat Comments at 18-19. In fact, however, Comsat is in a very different position than entities that resell INTELSAT space segment under the direct access framework. Comsat is the largest single investor in the INTELSAT system, and because only Level 3 direct access is authorized here, no U.S. direct access user is an investor in INTELSAT. Furthermore, only Comsat – not direct access users – must seek Commission authority to participate in the launch and operation of INTELSAT spacecraft. The Commission has already determined that it incurs regulatory costs as a result of Comsat’s participation in the INTELSAT satellite system, and that finding clearly justifies assessment of regulatory fees against Comsat.

Finally, Comsat argues that it should be excused from space station regulatory fees because it already pays the same international bearer circuit regulatory fees that are assessed against all satellite operators. Comsat Comments at 19. In fact, however, GE Americom and other satellite operators that compete with Comsat are subject to both international bearer circuit regulatory fees and space station regulatory fees. Thus, Comsat’s payment of other fees has no bearing on its liability for space station fees.

C. Prorating of Comsat’s Fee Liability Is Not Warranted

There is no basis for Comsat’s contention that the Commission should prorate the space station fees assessed on Comsat. See Comsat Comments at 21-23.

First, Comsat argues that the fees should be prorated to reflect the fact that Comsat currently utilizes only 17% of the total capacity of the INTELSAT system. In support of its claim, Comsat relies on a Commission decision in which Columbia Communications Corp. was given a rebate for 50% of the space station regulatory fee it had paid in connection with its use of capacity on NASA spacecraft.² That decision, however, was based on “unique circumstances” not present here. See *Columbia* at ¶ 3. Specifically, the Commission relied on the fact that Columbia’s use of the NASA spacecraft is secondary and can be preempted on minimal notice. *Id.* In addition, the Commission found it pertinent that 70% of Columbia’s revenues already go to the U.S. Treasury. *Id.* at ¶ 4. Contrary to Comsat’s suggestion, the Commission did not base its decision on the portion of the NASA satellite capacity to which Columbia had access. In fact, in a previous fee decision, the Commission specifically rejected arguments that space station fees should be prorated based on the number of transponders used. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13550-51. Furthermore, Comsat pays full space station application fees for FCC filings relating to the INTELSAT satellites without proration based on usage. There is no justification for treating regulatory fees differently.

Comsat also claims that its fee liability should be prorated to apply only to the period after enactment of the ORBIT Act. Comsat Comments at 22-23. But the *PanAmSat* case makes clear that the Commission is authorized to collect

² See *Columbia Communications Corporation*, FCC 98-299, 1999 FCC LEXIS 260 (Jan. 22, 1999).

space station regulatory fees from Comsat pursuant to Section 9 of the statute, which has been in effect since 1993. Thus, the date of enactment of ORBIT is irrelevant.

In short, assessment of full space station regulatory fees against Comsat, as proposed in the *Notice*, is consistent with the language and purpose of the enabling statute -- and absolutely necessary for regulatory parity.

II. THE COMMISSION SHOULD ADJUST ITS ACCOUNTING SYSTEM TO SEPARATELY TRACK COSTS FOR NEW SERVICES

Finally, the Commission should implement GE Americom's proposal for separate tracking in the Commission's accounting system of costs relating to new services. See GE Americom Comments at 4-5. Such costs are not properly attributable to regulatory benefits for existing licensees and should instead be recovered as overhead.

In its comments, NAB makes similar arguments with respect to the costs of the proposed development of a low power FM radio service ("LPFM"). Specifically, NAB argues that the Commission's activities in support of LPFM "do not, and are not intended to, benefit existing licensees." NAB Comments at 3. NAB argues as a result that it would be unfair to recover these costs from current operators, and that instead the costs should be allocated across all regulatory fee categories. *Id.*

By implementing a mechanism to track new service costs, the Commission can ensure that it has the necessary information to adjust regulatory

fees consistent with the statutory mandate that the fees be “reasonably related” to activities that benefit fee payers. 47 U.S.C. § 159(b)(1)(A).

CONCLUSION

For the foregoing reasons, the Commission should adopt its proposal to assess full space station regulatory fees to Comsat in connection with its use of the INTELSAT satellite system. The Commission should also make changes in its cost accounting system to separately calculate costs associated with the development of new services.

Respectfully submitted,

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